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June 27, 2005

Ex Parte

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Verizon Petition for Forbearance Under 47 U.S.C. Section 160(c) from Pricing Flexibility Rules For Fast Packet Services; Petition for Waiver of Pricing Flexibility Rules For Fast Packet Services, WC Docket No. 04-246

Dear Ms. Dortch:

This letter briefly summarizes the reasons that these petitions for limited, interim pricing flexibility authority for certain broadband services that rely on packetized technology, including Frame Relay, Asynchronous Transfer Mode ("ATM") and other packet switched services other than DSL (the "Advanced Services") should be promptly granted.

1. The relief sought here is both narrow and interim in nature.

The relief requested is very narrow because it only asks for the same degree of pricing flexibility for Advanced Services as Verizon has received for its special access services. It also limits the request for relief to those areas where Verizon has already established sufficient competition to obtain pricing flexibility for the underlying special access services. It is required only because of the unique circumstances surrounding the transfer of these Advanced Services back to Verizon from Verizon Advanced Data Inc. ("VADI"). When the Advanced Services were transferred back to Verizon, Verizon requested and the Commission approved a series of waivers to exclude them from the price cap indexes pending resolution of the regulatory

treatment of broadband services generally.¹ Because the Advanced Services were exempted from price caps under the waiver, they were not included, as they otherwise would have been, in the annual access tariff filings according to paragraph 173 of the *Pricing Flexibility Order*² and afforded pricing flexibility relief. At the same time, other price cap carriers have relief for these services either because they were included in their special access tariffs or because they are maintained in a separate affiliate.³

The relief requested is also only interim in nature. There are other ongoing rulemaking and forbearance proceedings to determine how these and other broadband services will be treated going forward.⁴ While Verizon firmly believes that the Commission should remove economic regulation of these and other broadband services in those proceedings, Verizon is not seeking to have the Commission prejudge those proceedings by granting Verizon's request here. The present petitions request very limited relief so that Verizon can have the same pricing flexibility for the Advanced Services that it already enjoys for traditional special access services (and that other carriers already enjoy for these broadband services) until the other proceedings are resolved.

2. The Commission unquestionably has the authority to grant the requested relief by waiving or forbearing from its own rules.

One way to provide relief, as explained in the petitions, is to waive or forbear from the requirements of paragraph 173 of the *Pricing Flexibility Order* or Section 69.729 of the Commission's rules that these new services⁵ be incorporated into price caps through an annual access tariff filing before pricing flexibility relief attaches. Each of those provisions assumes the normal course where pricing flexibility rules attach only to price capped services. Indeed, it

¹ See, letter from Tamara Preiss, Chief, Competitive Pricing Division, Common Carrier Bureau, to Verizon, dated December 17, 2001 (Special Permission No. 01-122).

² *Access Charge Reform, Fifth Report and Order and Further Notice of Proposed Rulemaking*, 14 FCC Rcd 14221, ¶ 173 (1999) ("*Pricing Flexibility Order*") ("Whenever a price cap LEC can demonstrate in an annual access tariff filing that one of its new services would be properly incorporated into a basket or service band for which it has been granted Phase I or Phase II regulatory relief in any MSA or MSAs, it will be granted the same relief in the same MSAs for that new service").

³ See Memorandum of Points and Authorities in Support of Verizon Waiver and Forbearance Petitions, WC Docket 04-246 at 10 (filed June 25, 2004).

⁴ See, e.g., *Review of Regulatory Requirements for Incumbent LEC Broadband Telecommunications Services, Notice of Proposed Rulemaking*, 16 FCC Rcd 22745 (2001) ("*Broadband Proceeding*"); *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities, Notice of Proposed Rulemaking*, 17 FCC Rcd 3019 (2002); Petition of the Verizon Telephone Companies for Forbearance from Title II and *Computer Inquiry Rules* with Respect to Their Broadband Services, WC Docket No. 04-440 (filed Dec. 20, 2004).

⁵ Having never been in price caps, the Advanced Services would qualify as new services under those provisions. To the extent there is any question, waiver or forbearance of any "new" service definitional limitations is appropriate under these unique circumstances.

would make little sense to require Verizon to first incorporate these services into price cap regulation only to then determine in other ongoing proceedings that they should not be subject to price regulation. It would also serve no purpose to subject Verizon to the regulatory burdens of incorporating the Advanced Services into price caps and making new market-by-market showings to obtain pricing flexibility. To the contrary, it would defeat the very purpose of the pricing flexibility mechanism of removing regulatory constraints to spur competition.

Of course, the Commission can achieve the same result by waiving or forbearing from the same substantive price cap rules that pricing flexibility relief affords. These rules prevent carriers from offering services on flexible terms by imposing the price cap structure and notice and supporting information requirements for tariff filings.⁶ By waiving or forbearing from these rules directly, the Commission can provide Verizon with the same pricing flexibility as under Phase I or Phase II relief. A waiver or forbearance from these substantive rules, of course, will only be to the extent necessary to permit Verizon to exercise pricing flexibility to the same degree and in the same areas as other traditional special access services that were already granted pricing flexibility.

3. Granting these petitions will enable Verizon to benefit customers by offering market-based contracts that are responsive to customer demand for these services.

The Commission will benefit customers by bringing added competition to the Advanced Services market by granting Verizon's request for relief. Without pricing flexibility, Verizon is hobbled in its ability to meet the demands of customers for individualized solutions with customized pricing and discounts and flexible contract terms. For example, Verizon is often unable to compete against other unregulated carriers for customers because customers demand end-to-end solutions. While Verizon may customize other special access services in connection with designing a competitive offering, the lack of pricing flexibility for the fast packet services prevents Verizon from effectively addressing all of the customer's needs. Granting the relief requested here would enable Verizon to exert downward pressure on rates through individualized competitive offers and provide customers the benefit of greater competition.

The relief requested is particularly justified when dealing with competitive broadband services such as these. These services include frame relay, ATM, and other packetized services used to route high volumes of data for enterprise retail customers and other carriers. These services are used in conjunction with traditional special access services to create high capacity data networks. Specifically, the Advanced Services at issue here are provided by connecting packetized equipment (that employs Frame Relay, ATM or other packet switching protocols) to special access links in order to provide a packetized service to business or carrier customers. The Commission has already granted Verizon pricing flexibility for the underlying traditional special access links based on MSA-by-MSA demonstration of competitive alternatives, and the petitions here do not request any additional relief for those services. Rather, the present petitions request the same relief for the Advanced Services at issue that already has been granted for the underlying traditional special access links.

⁶ See, e.g., 47 CFR §§ 69.114, 69.115 and 69.123 (rate structure requirements); sections 61.38 and 61.49 (supporting information for tariff filings); and section 61.58 (notice requirements).

There is no dispute that the competition for the broadband routing services is even more intense than for the traditional special access links that connect them. Indeed, a recent study confirms that Verizon has a share of only 4.9% of the Frame Relay services and 5.1% of ATM services.⁷ As a small player, Verizon seeks to do what all of its other major competitors can already do – give customers customized bids and offers to meet their individualized needs. Most of the competitors have no pricing constraints at all, and even most services sold by price cap ILECs have at least the pricing flexibility Verizon seeks here. The public interest will be served by granting Verizon the same ability to compete and offer its customers and potential customers lower prices and individualized bids.

4. The present petitions are fundamentally different than the SBC Petition⁸ that the Commission recently denied.

The SBC Petition was denied because the Commission had not yet decided what rules even applied to “IP Platform Services.” Therefore, the Commission concluded that it was not clear what the effect would be of granting forbearance, and that granting the petition might preclude a fully considered analysis of the appropriate regulatory treatment of those services. *Id.* ¶6. Here, the Commission previously treated the Advanced Services at issue as subject to the price caps rules prior to their transfer to VADI and in connection with the waivers excluding them from the price cap indexes. It also is absolutely clear what the effect of the requested forbearance will be -- Verizon has requested relief only to the extent necessary to exercise the same pricing flexibility as for other special access services. Therefore, the Commission’s pricing flexibility rules themselves define the effect of granting relief. Moreover, because the relief will be only interim in nature, granting Verizon’s request will not preclude the Commission from giving further and full consideration to the appropriate treatment of broadband services generally in the various pending broadband proceedings.

Sincerely,

cc: Tom Navin
Tamara Preiss
Julie Veach
Marvin Sacks
Judy Nitsche
Margaret Dailey
James Lichford

⁷ M. Bowen et al., Schwab Soundview Capital Markets, AT&T Corp. at 2 (Jan. 21, 2004).

⁸ Petition of SBC Communications Inc. for Forbearance from the Application of Title II Common Carrier Regulation to IP Platform Services, WC Docket No. 04-29 (filed Feb. 5, 2004) (“SBC Petition”); *Petition of SBC Communications Inc. for Forbearance from the Application of Title II Common Carrier Regulation to IP Platform Services*, Memorandum Opinion and Order, WC Docket No. 04-29, FCC 05-95 (rel. May 5, 2005).